

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

OP.No. 12607 of 2002(A)

PETITIONER:

**M.A.DAMODARAN, AGED 75 YEARS,
S/O.AYYAPPAN (LATE), MADATHIL HOUSE, KALLADU,
KOTTAYAM DISTRICT.**

BY ADV. SRI.C.C.THOMAS

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM**
- 2. THE DISTRICT COLLECTOR, KOTTAYAM.**
- 3. THE ASST.EXCISE COMMISSIONER, KOTTAYAM.**
- 4. THE WELFARE FUND INSPECTOR-1, KERALA
TODDY WORKERS WELFARE FUIND BOARD, COLLECTORATE P.O
KOTTAYAM.**
- 5. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE, THIRUVANANTHAPURAM.**

**BY ADV. SRI.A.K.JOHN, SC, KTWWF BOARD
GOVERNMENT PLEADER SRI.V.T.K.MOHANAN**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

OP. NO.12607/2002

ORDER ON CMP. NO.21450/2002 IN OP. NO.12607/2002

DISMISSED

24.07.2007

SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE IDENTITY CARD DT. 8.4.02 ISSUED BY THE TAHSILDAR.

EXT.P2:- COPY OF THE EXPERIENCE CERTIFICATE, DT. 9.4.02, ISSUED BY THE C.I. OF KOTTAYAM.

EXT.P3:- COPY OF THE EXPERIENCE CERTIFICATE, DT. 8.4.02 ISSUED BY THE W.F.I. KOTTAYAM.

EXT.P4:- COPY OF THE CERTIFICATE DT. 6.4.02 ISSUED BY THE A.E.C. KOTTAYAM.

EXT.P5:- COPY OF THE CERTIFICATE DT. 8.4.02 ISSUED BY THE SALES TAX OFFICER II, CIRCLE, KOTTAYAM.

EXT.P6:- COPY OF THE CLEARANCE CERTIFICATE DT. 7.4.02, ISSUED BY THE 4TH RESPONDENT.

EXT.P7:- COPY OF THE D.D. DT. 9.4.02, ISSUED BY THE CORPORATION BANK, KOTTAYAM.

EXT.P8:- COPY OF THE BANK GUARANTEE FOR AN AMOUNT OF RS. 1,20,000/- ISSUED BY THE CORPORATION BANK, KOTTAYAM.

EXT.P9:- COPY OF THE APPLICATION FOR GETTING THE LICENSE FOR THE TODDY SHOP NO.28 IN KOTTAYAM EXCISE RANGE.

EXT.P10:- COPY OF THE CORRECTED APPLICATION FOR THE TODDY SHOP NO.29.

EXT.P11:- COPY OF THE APPLICATION SUBMITTED FOR LICENSE FOR T.S. NO.29.

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EXT.P12:- COPY OF THE APPLICATION DT. 20.4.02 SUBMITTED BEFORE THE DISTRICT COLLECTOR, KOTTAYAM.

EXT.P13:- COPY OF THE RECEIPT NO.22 IN BOOK NO.121 DT. 22.4.02 ISSUED BY THE TAHSILDAR (R.R) KOTTAYAM.

EXT.P14:- COPY OF THE ORDER DT. 19.4.02 PASSED BY THE 2ND RESPONDENT.

EXT.P15:- COPY OF THE ORDER NO.XA1-30000/01 DT. 22.4.02 PASSED BY THE 5TH RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

tss

T.R. Ramachandran Nair, J.

O.P.NO.12607 of 2002-A

Dated this the 24th day of July, 2007

JUDGMENT

The petitioner had participated in the purchase of licence for toddy shop Nos.28 and 29 in Kottayam Excise Range on 19.4.2002. Ext.P6 is the certificate issued by the 4th respondent stating that the petitioner is not in arrears in respect of Toddy Workers Welfare Fund upto the period 31.3.2001. The petitioner submitted an application as per Ext.P9 for getting the license for toddy shop No.28. It is stated that the second respondent rejected the same on the ground that in Ext.P6 certificate the date shown in column No.3 is 31.3.2001 instead of 31.12.2001. After getting the certificate corrected, the petitioner submitted another application for getting the license for toddy shop No.29. Ext.P11 is the said application and Ext.P10 is the corrected certificate issued by the 4th respondent. In Ext.P10 it is stated that “he is eligible to be treated as not being in arrears upto 31.12.2001.”

2. Thereafter, a lot was taken but immediately he was told that he was in arrears towards toddy workers welfare fund. It is the case of the petitioner that immediately he informed the second respondent that there are

no arrears to his knowledge and he relied upon Ext.P10 also. He had offered to pay any arrears under protest. The petitioner followed it up by filing Ext.P12 application requesting to give licence for toddy shop No.29 after permitting him to pay the arrears, if any. It is the further case of the petitioner that he had paid the entire arrears also which is evidenced by Ext.P13.

3. The District Collector cancelled the privilege provisionally granted to the petitioner by invoking Rule 5(17) of the Abkari Shops Disposal Rules and it was ordered that Rs.50,000/- which was deposited as annual rental be forfeited. The above order was confirmed by the Excise Commissioner as per Ext.P15. It is the case of the petitioner that he was not heard before passing Exts.P14 and P15.

4. Learned counsel for the petitioner contended that there are no circumstances to order forfeiture of the amount of Rs.50,000/-, the annual rental deposited by him. It is pointed out that Exts.P6 and P10 will show that he was not in arrears for the period in question and Ext.P6 was issued by the competent officer, viz. 4th respondent and relying upon the same, he had filled up the column of the application Ext.P11 that he is not in arrears to the Abkari Welfare Fund and hence it is not a case where the petitioner can be accused of suppressing any conditions of eligibility. The authorities have approached the question in the sense that once it is held that there was

arrears towards welfare fund then the forfeiture is automatic.

5. The relevant rules are Rules 5(3)(iii) and 5(17) of the Abkari Shops Disposal Rules. Rule 5(3) provides for conditions of eligibility for getting the privilege of any shop. Under sub-rule (iii) of Rule 5(3) the person concerned is ineligible if he is a defaulter of abkari arrears, sales tax arrears or any other arrears due to the Kerala Toddy Workers Welfare Fund or the Kerala Abkari Workers Welfare Fund. It is the requirement of the rule that he should produce from the Circle Inspector of Excise, Sales Tax Officer, the Authority of the said Welfare Fund Board or any other officer authorised in this behalf as the case may be, a certificate to the effect that no dues are outstanding against him. Going by the stipulations of the above rule, this is a case where the petitioner had complied with the provisions in its letter and spirit. Ext.P6 shows that the 4th respondent has clearly certified that the petitioner is eligible to be treated as not being in arrears upto 31.3.2001. In Ext.P10 the “no dues certificate” has been issued upto the period 31.12.2001. Both are issued on the same date. Therefore, it cannot be said that there is an act of suppression on the part of the petitioner while submitting the application evidenced by Ext.P11. He was entitled to believe and rely upon the veracity of the facts stated in Exts.P6 and P10 being issued by the competent authority. Now the question is whether in such circumstances, the power conferred under Rule 5(17) on the authority

to order forfeiture of the amount remitted as annual rental value is automatic or not. As far as the petitioner is concerned, the authority has chosen to order forfeiture based on the fact that he had suppressed facts in his application as to his eligibility, obviously. It cannot be disputed that the petitioner was armed with Exts.P6 and P10 when he submitted the application, Ext.P11. The application Ext.P11 is dated 10.4.2002. The authorities have relied upon in Ext.P14, the report of the Welfare Inspector dated 19.4.2002 which is subsequent to the certificates issued, viz. Exts.P6 and P10. Therefore, the provisions of Rule 5(17) that the purchaser had suppressed facts in his application as to his eligibility, is not satisfied in this case.

6. Learned counsel for the petitioner relied upon the decision of a Division Bench of this court in Writ Appeal No.2995/2002 wherein a similar question was considered. After considering the factual matrix arising for decision in that case their Lordships were of the view that the petitioner therein had not produced any fake documents to obtain the privilege declared in her favour and also that similarly it cannot be said that she suppressed facts in her application as to her eligibility. It was therefore held that the amount paid by the petitioner towards annual rental value cannot be forfeited or there cannot be any suppression as to the conditions of eligibility. Their Lordships held that “the power under Rule 5(17) can be

exercised to forfeit the amount paid towards the annual rental of the shop only if it is found that any purchaser of privilege had suppressed facts in his application as to his eligibility including preference or produced fake documents and obtained the privilege declared or confirmed in his name or obtained any licence granted in his name.” I respectfully follow the above dictum. In Ext.P14, the District Collector rested his conclusion only on the basis of the subsequent report issued by the Toddy Workers Welfare Fund Inspector as also by the Tahsildar. The question whether at the time when the application was filed, there was any suppression of material fact, had not been examined and found at all. It is also not disputed that Exts.P6 and P10 were issued by the competent authority at the relevant time. Therefore, the finding by the District Collector that the petitioner is liable for forfeiture of the amount paid towards annual rental value, is unsustainable. Ext.P15, the Excise Commissioner never considered the matter in the light of the relevant documents produced by the petitioner. He had only stamped approval for the order Ext.P14 passed by the District Collector, without applying his mind to the facts in question. It cannot be stated that there was any wilful suppression on the part of the petitioner while applying for the licence. The liability resulting in forfeiture is of penal nature. Hence, an element of wilful suppression should be evident in the act of the person concerned. Herein, going by the facts and circumstances, such elements are

absent.

7. Therefore, even though the privilege was cancelled, that part of the order whereby the annual rental was forfeited to the Government, is liable to be quashed. I do so. Therefore, Exts.P14 and P15 are quashed to the extent the annual rental of Rs.50,000/- is forfeited to the Government. There will be a direction to the respondents to release the said amount to the petitioner within a period of two months from the date of receipt of a copy of this judgment with accrued interest, if any.

The original petition is disposed of in the above terms. No costs.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P.NO.12607 of 2002-A
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JUDGMENT

24th day of July, 2007